

Keeping Head Down Doesn't Constitute Negligence

By WILLIAM JABINE

The admonition, "Keep your head down," drummed into the ears of so many generations of golfers, has won judicial approval. The fourth district court of appeal of California ruled recently that the golfer who keeps his head down, even after the ball has been hit, is not guilty of negligence.

Judicial acceptance of a time-honored rule of golfing behavior was part of the court's decision in an action brought by a golfer at Willowick GC in Santa Ana. While playing in a foursome on the fourth fairway he was hit on the head by a ball driven from the third tee. He brought an action against the player who had driven the ball, charging negligence because there had been no warning shout of "fore." He also claimed the defendant had not looked up and discovered the direction his ball was taking in time to give such a warning. The trial court entered a judgment of non-suit and the injured golfer appealed the judgment to the court of appeal.

As indicated above, that court affirmed the judgment of the trial court. It held that the golfer who drove the ball had not been negligent. After describing in considerable detail the topography of the parallel holes on which the plaintiff and defendant were playing, and noting the physical condition of the two men (the plaintiff was 69, had been playing golf for 45 years and apparently had normal hearing and eyesight; the defendant had been playing for 31 years, had normal hearing, but slightly impaired eyesight) the court described the accident as follows:

Didn't Look Up

"At the time of the accident, the defendant drove his ball from the tee of No. 3 hole and endeavored and intended its direction to be straight down the center of the fairway. Plaintiff was in plain sight of defendant and the defendant was in plain sight of the plaintiff. Neither specifically looked at the other. Defendant, after completing his swing, kept his head down a short time. When he looked up and located the flight of his ball, it had already traveled about 180 yards of an estimated 200 yards toward the plaintiff.

It was about 12 feet high and looked like it was going over the head of plaintiff, but it was too late to call a warning. No one actually saw the ball strike plaintiff's head but it is assumed by both sides that it did.

There is no evidence in the case at bar that a call of "fore" could have been formed in the vocal chords of the defendant after his first sight of the ball. It didn't reach the ear of plaintiff, giving him time to react soon enough to have had any effect on proximate cause."

Then, analyzing in every aspect the cry of "fore," the court listed the citations presented in both briefs and continued:

Hazards Develop from Error

"We are unable to agree entirely with either plaintiff or defendant. It is perfectly true that a player of a game where many hazards develop from player errors which cannot be classified as negligent, does assume the risk of injury from many of these hazards. The citations given by defendant clearly support this view.

"In each, however, the known customs of the game play some part in this conclusion. For example, a person intentionally walking across in front of a player just about to swing on a fairway shot would undoubtedly assume risk. On the other hand, if the player's ball were on the green ready to be putted, a person walking across on the far side of the green, even though this is a discourtesy, would not assume the risk of a ball driven from the green, for the rules and custom of the game forbid anyone driving a ball off the green itself.

Even Pro Couldn't Do It

"In the case at bar, there is no evidence that even the finest professional would be guilty of "pulling" a ball off the intended line of flight. This is well known to all golf players. Any player does assume the risk of such a ball unless the driver of the ball sees the danger in time to give a warning.

"There is likewise no evidence that keeping one's head down after completing a stroke is negligence. There is no evidence that failure to have a caddie, whose duty is to mark the ball's flight, is negligence. There is no evidence that any action by the defendant, after first seeing the line of flight of the ball, could have changed the final result." (Strand v. Conner, 24 Cal. Repr. 584.)